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EXAMINER

HAYES, JOHN W

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3621

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/543,049
Filing Date: April 05, 2000
Appellant(s): POMERANCE, BRENDA

Ms. Brenda Pomerance
Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 03 December 2004.

Art Unit: 3621

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 47, 55-58 and 61-63 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,895,450	Sloo	4-1999
6,154,753	McFarland	11-2000
5,495,412	Thiessen	2-1996

"Online Mediation Offered for Resolving E-Commerce Disputes", Press Release, Online Resolution, 23 March 2000

Eisen, Joel, "Are We Ready for Mediation in Cyberspace", Brigham Young University Law Review, 1998

Brownwell, Eileen O., "Say it Right", IIE Solutions, February 1999

Art Unit: 3621

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sloo, U.S. Patent No. 5,895,450 in view of "Online Mediation Offered for Resolving E-Commerce Disputes", Press Release, Online Resolution, 23 March 2000 [hereinafter referred to as Online Resolution]..

As per Claim 46, Sloo discloses a method of processing a complaint comprising:

- automatically receiving, at a computer, initial information from a complainer including information identifying the complainer (Col. 1 line 65-Col. 2 line 2; Col. 2, lines 55-60; Col. 3, lines 12-21; Col. 4 line 51-Col. 5 line 2; Col. 12, lines 47-61; Col. 13, lines 50-53);
- automatically selecting, at the computer, selected data from data previously received from a complaine based on the initial information from the complainer (Col. 11, lines 21-36; Col. 12 line 62-Col. 13 line 15; Col. 14, lines 1-8);
- automatically providing, from the computer, the selected data to the complainer (Col. 4, lines 45-50; Col. 10, lines 47-53, Col. 11, lines 21-36; Col. 12 line 62-Col. 13 line 15; Col. 14, lines 1-8);
- automatically receiving, at the computer, additional information from the complainer after providing the data to the complainer (Col. 4, line 63-Col. 5 line 2; Col. 5, lines 21-29);
- automatically preparing, at the computer, the complaint based on the initial information and the additional information received from the complainer (Col. 5, lines 3-11 and 21-29)
- automatically presenting, from the computer, the prepared complaint to the complainer for approval to generate an approved complaint (Col. 5, lines 20-29)
- automatically forwarding, from the computer, the approved complaint to the complaine (Col. 5, lines 37-46).

Sloo discloses automatically retrieving and selecting data from previously resolved complaints based on the initial information from the complainer and providing this data to the complainer. Sloo also

Art Unit: 3621

teaches that the system would draw from information gathered from previous recorded encounters and inform the participant of what the complaint handling apparatus knows about the object; or create warnings or bulletins on objects based on what it knows about the participant and the situation (Col. 11, lines 21-36; Col. 12 line 62-Col. 13 line 15; Col. 14, lines 1-8). Sloo fails to explicitly disclose that the information gathered from previous recorded encounters or previously resolved complaints is from the complainee, however, examiner submits that it would have been obvious to one having ordinary skill in the art at the time of applicant's invention that information recorded from previous encounters or previously resolved complaints would include information from a complainee.

Sloo also fails to explicitly disclose that the complaint forwarded to the complainee includes information identifying the complainer. Sloo does teach, however, an added benefit that enables the parties to a dispute to remain anonymous so that members of the public and also the complainees cannot determine the identity of the complainer, however, this does not exclude other conventional methods to carry out communication between the parties. Sloo teaches a method of identifying the complainer to the system. Sloo teaches that the user enters identifying information when registering a complaint (Col. 4, lines 48-51). Sloo also indicates that the user enters their phone number and e-mail address to identify the user (Col. 4 line 66-Col. 5 line 2). Although Sloo teaches that the communications between the complainer and complainee are anonymous, examiner submits that it would have been obvious to one having ordinary skill in the art to provide complainer identifying information to the complainee in the event that the parties have no desire to remain anonymous. For example, Online Resolution discloses that anyone interested in using online mediation can go to a web site, detail their grievance and submit it using e-mail. A center then contacts the other party and if the other party agrees to mediation, then all parties have the ability to communicate with each other by e-mail, instant messaging and even group discussions until they solve the problem. Examiner submits that using e-mail addresses is a form of user identification and it would have been obvious to use this type of identifier to communicate between parties of a dispute that don't desire to remain anonymous.

Art Unit: 3621

As per **Claim 48**, Sloo further discloses wherein the prepared complaint includes an indication of a remedy desired by the complainer and could include a monetary value for settlement and certain contract conditions that the complainer would accept to settle the dispute (Col. 4, lines 61-67; Col. 7 line 65-Col. 8 line 5). Sloo does not expressly disclose that the complaint includes at least two remedies desired by the complainer, however, this would have been obvious to one of ordinary skill in the art. Sloo suggests remedies such as monetary values and certain contract conditions that the complainer would accept to settle the dispute suggesting that any number of remedies would be included in the complaint and communicated to the complainee. Thus, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Sloo and include any number of remedies in the complaint and communicate these suggested remedies to the complainee. Sloo provides motivation by indicating that this would give the complainee the option of accepting or refusing the offer in an effort to settle the dispute.

As per **Claim 50**, Sloo and Online Resolution fail to expressly disclose that the data provided to the complainer previously received from a complainee relates to a complaint handling policy. However, these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The steps of receiving data and providing data to the complainer would be performed the same regardless of the type of data or source of the data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore, it would have been obvious to a person of ordinary skill in the art at the time of applicant's invention to receive from a complainee or any other source any type of data and providing the data to a complainer because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

Art Unit: 3621

As per **Claim 52**, Sloo further discloses providing a response from the complainee to the complainer (Col. 1, lines 57-60; Col. 2, lines 7-12; Col. 6, lines 65-67; Col. 7, lines 58-65).

As per **Claim 53**, Sloo further discloses automatically preparing a case summary based on the complaint and the response ((Col. 8, lines 33-40; Col. 9, lines 57-63; Col. 10, lines 13-21).

As per **Claim 54**, Sloo further discloses providing data related to other complaints to the complainer prior to preparing the complaint (Col. 10 line 47-Col. 11 line 36).

Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sloo, U.S. Patent No. 5,895,450 in view of Online Resolution as applied above and further in view of Eisen, Joel, "Are We Ready for Mediation in Cyberspace" [hereinafter referred to as Eisen].

As per **Claim 47**, Sloo discloses a method of facilitating dispute resolution between a complainer and a complainee and generating a prepared complaint, however, does not specifically teach that the prepared complaint includes the emotional state of the complainer. Sloo does teach the use of an automatic decision maker option wherein participant behavior is monitored in certain situations and outcomes over time; and artificial intelligence techniques may be used to predict an outcome based on what it has learned about behavior, situations and their outcome (Col. 10, lines 54-67). Online Resolution discloses an alternative dispute resolution method conducted online wherein participants fill out a form detailing their grievance and submit it by e-mail. Online Resolution suggests that emotions are a big part of the mediation process. Eisen discloses the importance of expressing emotion when settling disputes and teaches that weight must be given to emotion when settling disputes between individuals (page 5) since it can foster the process of resolution and can enable one to vent their feelings or express one's position on the dispute. Eisen teaches that the opportunity to tell one's version of the dispute directly to the opposing party and to express accompanying emotions can be cathartic for mediation participants. Eisen also indicates that understanding the parties concerns, emotions and feelings are an important part

Art Unit: 3621

in the mediation process since it enables the parties to engage in therapeutic conversation (page 5). Eisen goes on to state that it would be unwarranted to deliberately suppress expressions of anger or emotion in order to promote “constructive” responses since no one would know that the participant had been angry and that anger is a common feature of disputes and participants have legitimate rights to express it to other participants (page 7). Thus, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Sloo and include a summary of the emotional state of the complainer in the complaint based on the teachings of Online Resolution and Eisen. Providing the emotional state of the complainer would enable the complaine to get a better understanding of the complainers state of feeling and would enable the complaine to more effectively respond to the complaint.

As per **Claim 55**, Sloo discloses a method of processing a complaint comprising:

- automatically receiving, at a computer, information from a complainer including information describing a problem and information identifying the complainer (Col. 1 line 65-Col. 2 line 2; Col. 2, lines 55-60; Col. 3, lines 12-21; Col. 4 line 51-Col. 5 line 2; Col. 12, lines 47-61; Col. 13, lines 50-53)
- automatically, at the computer, preparing the complaint based on the information received from the complainer (Col. 5, lines 3-11)
- automatically, at the computer, presenting the prepared complaint to the complainer for approval to generate an approved complaint (Col. 5, lines 20-29)
- automatically forwarding, from the computer, the approved complaint to the complaine (Col. 5, lines 37-46).

Sloo discloses a method of facilitating dispute resolution between a complainer and a complaine and generating a prepared complaint, however, does not specifically teach that the prepared complaint includes the emotional state of the complainer. Sloo does teach the use of an automatic decision maker option wherein participant behavior is monitored in certain situations and outcomes over time; and artificial intelligence techniques may be used to predict an outcome based on what it has learned about

Art Unit: 3621

behavior, situations and their outcome (Col. 10, lines 54-67). Online Resolution discloses an alternative dispute resolution method conducted online wherein participants fill out a form detailing their grievance and submit it by e-mail. Online Resolution suggests that emotions are a big part of the mediation process. Eisen discloses the importance of expressing emotion when settling disputes and teaches that weight must be given to emotion when settling disputes between individuals (page 5) since it can foster the process of resolution and can enable one to vent their feelings or express one's position on the dispute. Eisen teaches that the opportunity to tell one's version of the dispute directly to the opposing party and to express accompanying emotions can be cathartic for mediation participants. Eisen also indicates that understanding the parties concerns, emotions and feelings are an important part in the mediation process since it enables the parties to engage in therapeutic conversation (page 5). Eisen goes on to state that it would be unwarranted to deliberately suppress expressions of anger or emotion in order to promote "constructive" responses since no one would know that the participant had been angry and that anger is a common feature of disputes and participants have legitimate rights to express it to other participants (page 7). Thus, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Sloo and include a summary of the emotional state of the complainer in the complaint based on the teachings of Online Resolution and Eisen. Providing the emotional state of the complainer would enable the complaine to get a better understanding of the complainers state of feeling and would enable the complaine to more effectively respond to the complaint.

As per **Claim 56 and 57**, Sloo and Online Resolution fail to expressly disclose that the data provided to the complainer is previously received from a complaine or that it relates to a complaint handling policy. However, these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The steps of receiving data and providing data to the complainer would be performed the same regardless of the type of data or source of the data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579,

Art Unit: 3621

32 USPQ2d 1031 (Fed. Cir. 1994). Therefore, it would have been obvious to a person of ordinary skill in the art at the time of applicant's invention to receive from a complaine or any other source any type of data and providing the data to a complainer because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

As per Claim 58, Sloo further discloses wherein the prepared complaint includes an indication of a remedy desired by the complainer and could include a monetary value for settlement and certain contract conditions that the complainer would accept to settle the dispute (Col. 4, lines 61-67; Col. 7 line 65-Col. 8 line 5). Sloo does not expressly disclose that the complaint includes at least two remedies desired by the complainer, however, this would have been obvious to one of ordinary skill in the art. Sloo suggests remedies such as monetary values and certain contract conditions that the complainer would accept to settle the dispute suggesting that any number of remedies would be included in the complaint and communicated to the complaine. Thus, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Sloo and include any number of remedies in the complaint and communicate these suggested remedies to the complaine. Sloo provides motivation by indicating that this would give the complaine the option of accepting or refusing the offer in an effort to settle the dispute.

As per Claim 61, Sloo further discloses providing a response from the complaine to the complainer (Col. 1, lines 57-60; Col. 2, lines 7-12; Col. 6, lines 65-67; Col. 7, lines 58-65).

As per Claim 62, Sloo further discloses automatically preparing a case summary based on the complaint and the response ((Col. 8, lines 33-40; Col. 9, lines 57-63; Col. 10, lines 13-21).

As per Claim 63, Sloo further discloses providing data related to other complaints to the complainer prior to preparing the complaint (Col. 10 line 47-Col. 11 line 36).

Art Unit: 3621

Claim 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sloo, U.S. Patent No. 5,895,450, Online Resolution and Eisen as applied above and further in view of Brownwell, Eileen O., "Say it Right".

As per **Claims 49**, Sloo discloses a method of preparing and processing a complaint, however, fails to expressly disclose wherein the prepared complaint includes statements in the first person language based on information received from the complainer that was not in first person language. Brownwell discloses that effective communication is essential to the success of professionals and that to be effective communicators, professionals should use the basics such as speaking in a first-person voice. Also, using first person language helps to prevent hostile or tense arguments when attempting to resolve a dispute between parties. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Sloo and include preparing complaint statements using first person language to improve the communication between the parties as taught by Brownwell. Brownwell provides motivation by indicating that no other single interpersonal skill is as important to group dynamics, team development or customer service as the ability to communicate effectively and using first person language is one of the basics for communicating effectively.

Claim 51 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sloo, U.S. Patent No. 5,895,450, Online Resolution and Eisen as applied above and further in view of McFarland, U.S. Patent No. 6,154,753.

As per **Claim 51**, Sloo discloses a method for dispute resolution, however, Sloo fails to specifically disclose automatically docketing the complaint for follow-up action. McFarland discloses a method and system for meeting quality standards and a method that enables an organization to carry on its business activities in accordance with quality standards and teaches a method for entering customer complaints into the system (Col. 17, lines 30-57) and wherein the complaint form is saved with an

Art Unit: 3621

indication of when follow up with the customer is needed (Col. 18, lines 1-5). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Sloo and include the ability to docket the complaint for follow up actions at predetermined times as taught by McFarland. The motivation for doing this would be to ensure that the complaint is resolved or at least responded to within a certain period of time that is appropriate to the complainer or complaine.

Claim 59 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sloo, U.S. Patent No. 5,895,450, Online Resolution and Eisen as applied above and further in view of Brownwell, Eileen O., "Say it Right".

As per Claim 59, Sloo discloses a method of preparing and processing a complaint as discussed above, however, fail to expressly disclose wherein the prepared complaint includes statements in the first person language based on information received from the complainer that was not in first person language. Brownwell discloses that effective communication is essential to the success of professionals and that to be effective communicators, professionals should use the basics such as speaking in a first-person voice. Also, using first person language helps to prevent hostile or tense arguments when attempting to resolve a dispute between parties. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Sloo and include preparing complaint statements using first person language to improve the communication between the parties as taught by Brownwell. Brownwell provides motivation by indicating that no other single interpersonal skill is as important to group dynamics, team development or customer service as the ability to communicate effectively and using first person language is one of the basics for communicating effectively.

Claim 60 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sloo, U.S. Patent No. 5,895,450, Online Resolution and Eisen as applied above, and further in view of McFarland, U.S. Patent No. 6,154,753.

Art Unit: 3621

As per **Claim 60**, Sloo disclose a method for dispute resolution, however, fail to specifically disclose automatically docketing the complaint for follow-up action. McFarland discloses a method and system for meeting quality standards and a method that enables an organization to carry on its business activities in accordance with quality standards and teaches a method for entering customer complaints into the system (Col. 17, lines 30-57) and wherein the complaint form is saved with an indication of when follow up with the customer is needed (Col. 18, lines 1-5). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Sloo and include the ability to docket the complaint for follow up actions at predetermined times as taught by McFarland. The motivation for doing this would be to ensure that the complaint is resolved or at least responded to within a certain period of time that is appropriate to the complainer or complaine.

Claim 85 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sloo, U.S. Patent No. 5,895,450 in view of Thiessen, U.S. Patent No. 5,495,412.

As per **Claim 85**, Sloo discloses a method of processing a complaint comprising:

- automatically receiving, at a computer, information from a complainer including information relating to a problem experienced by the complainer and information identifying the complainer (Col. 1 line 65-Col. 2 line 2; Col. 2, lines 55-60; Col. 3, lines 12-21; Col. 4 line 51-Col. 5 line 2; Col. 12, lines 47-61; Col. 13, lines 50-53);
- automatically selecting, at the computer, at least one remedy or proposed solution based on the information from the complainer (Col. 11, lines 21-36);
- automatically suggesting, at the computer, the at least one selected remedy to the complainer (Col. 11, lines 21-36).
- automatically preparing, at the computer, the complaint based on the information received from the complainer (Col. 5, lines 3-11)
- automatically presenting, from the computer, the prepared complaint to the complainer for approval to generate an approved complaint (Col. 5, lines 20-29)

Art Unit: 3621

- automatically forwarding, from the computer, the approved complaint to the complainee (Col. 5, lines 37-46).

Sloo, however, fails to specifically disclose receiving a response to the suggested remedy.

Thiessen discloses a computer-based method for interactive computer-assisted negotiations and teaches automatically suggesting solutions or remedies to parties of a dispute (Col. 3, lines 30-39 and 50-55; Col. 4, lines 54-60; Col. 5, lines 53-60) and receiving a response to the suggested solution (Col. 4, lines 55-60; Col. 5, lines 55-60). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Sloo and include the ability to suggest a remedy to a party of a dispute as disclosed by Thiessen. Thiessen provides motivation by indicating that making suggestions or proposed solutions would provide an alternative that all parties of a conflict could consider and might find acceptable (Col. 1, lines 25-41) or may significantly help in the quest for agreement.

As per Claim 88, Sloo further discloses providing a response from the complainee to the complainer (Col. 1, lines 57-60; Col. 2, lines 7-12; Col. 6, lines 65-67; Col. 7, lines 58-65).

As per Claim 89, Sloo further discloses providing data related to other complaints to the complainer prior to preparing the complaint (Col. 10 line 47-Col. 11 line 36).

Claim 86 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sloo, U.S. Patent No. 5,895,450 and Thiessen, U.S. Patent No. 5,495,412 as applied above and further in view of Eisen, Joel, "Are We Ready for Mediation in Cyberspace" [hereinafter referred to as Eisen].

As per Claim 86, Sloo discloses a method of facilitating dispute resolution between a complainer and a complainee and generating a prepared complaint, however, does not specifically teach that the prepared complaint includes the emotional state of the complainer. Sloo does teach the use of an automatic decision maker option wherein participant behavior is monitored in certain situations and outcomes over time; and artificial intelligence techniques may be used to predict an outcome based on

Art Unit: 3621

what it has learned about behavior, situations and their outcome (Col. 10, lines 54-67). Eisen discloses the importance of expressing emotion when settling disputes and teaches that weight must be given to emotion when settling disputes between individuals (page 5) since it can foster the process of resolution and can enable one to vent their feelings or express one's position on the dispute. Eisen teaches that the opportunity to tell one's version of the dispute directly to the opposing party and to express accompanying emotions can be cathartic for mediation participants. Eisen also indicates that understanding the parties concerns, emotions and feelings are an important part in the mediation process since it enables the parties to engage in therapeutic conversation (page 5). Eisen goes on to state that it would be unwarranted to deliberately suppress expressions of anger or emotion in order to promote "constructive" responses since no one would know that the participant had been angry and that anger is a common feature of disputes and participants have legitimate rights to express it to other participants (page 7). Thus, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Sloo and include a summary of the emotional state of the complainer in the complaint based on the teachings of Eisen. Providing the emotional state of the complainer would enable the complaine to get a better understanding of the complainers state of feeling and would enable the complaine to more effectively respond to the complaint.

Claim 87 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sloo, U.S. Patent No. 5,895,450 and Thiessen, U.S. Patent No. 5,495,412 as applied above and further in view of McFarland, U.S. Patent No. 6,154,753.

As per Claim 87, Sloo discloses a method for dispute resolution, however, Sloo fails to specifically disclose automatically docketing the complaint for follow-up action. McFarland discloses a method and system for meeting quality standards and a method that enables an organization to carry on its business activities in accordance with quality standards and teaches a method for entering customer complaints into the system (Col. 17, lines 30-57) and wherein the complaint form is saved with an indication of when follow up with the customer is needed (Col. 18, lines 1-5). It would have been obvious

Art Unit: 3621

to one of ordinary skill in the art at the time of applicant's invention to modify the method of Sloo and include the ability to docket the complaint for follow up actions at predetermined times as taught by McFarland. The motivation for doing this would be to ensure that the complaint is resolved or at least responded to within a certain period of time that is appropriate to the complainer or complaine.

(11) Response to Argument

Examiner will respond to appellant's arguments in the same order that they were presented in the brief.

Issue 2B (Claims 55-58 and 61-63)

Appellant summarizes the references to Sloo, Online Resolution and Eisen, states that Online Resolution and Eisen are concerned with mediation involving a human mediator, then concludes that it is improper to combine Sloo, relating to an arbitration system, with either of Online Resolution or Eisen, since these references relate to mediation. Appellant also makes reference to the Declarations filed by Kallas and Femenia which support this idea. Appellant also argues that examiner has resorted to hindsight reconstruction to supply deficiencies in his facts. Appellant further argues that Eisen does not teach collecting emotional state information in a system lacking a mediator and further states that to be usable for what it teaches away from, Eisen would have to present the teaching for the same use as in the claimed invention, which Eisen does not do. Appellant also argues that Online Resolution does not teach a computer that collects emotional state information. Examiner respectfully disagrees that it is improper to combine the teachings of Sloo with the teachings of either the Online Resolution or the Eisen reference. Examiner submits that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Examiner also submits that it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill

Art Unit: 3621

at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). When considering the language of claim 55, examiner submits that there is no recitation or suggestion that the method of processing a complaint relates to either mediation or arbitration as a method of resolving a dispute, but rather relates to a more direct method of resolving disputes between a complainer and a complaine, such as direct communication. Examiner submits that in one embodiment, Sloo discloses this more direct means of resolving disputes between the parties with regard to the "Negotiate the Complaint" option (Col. 7, lines 28-35). Examiner is not suggesting bodily incorporating the structure of either Online Resolution or Eisen into the system of Sloo or even modifying a arbitration method to be more like a mediation method for resolving disputes, but rather is relying on the Online Resolution and Eisen teachings to merely provide evidence that the knowledge of emotional state information of a complainer is important and must be given weight when resolving disputes between complainers and complainees. Sloo and Online Resolution are both clearly related to methods of handling disputes and examiner submits that it is reasonable to draw inferences from either of these references to show what was known or would have been obvious to one of ordinary skill in the art of dispute resolution at the time of applicant's claimed invention. Online Resolution discloses an alternative dispute resolution method conducted online wherein participants fill out a form detailing their grievance and submit it by e-mail. More importantly, Online Resolution explicitly states that emotions are a big part of the mediation process. Eisen discloses the importance of expressing emotion when settling disputes and teaches that weight must be given to emotion when settling disputes between individuals (page 5) since it can foster the process of resolution and can enable one to vent their feelings or express one's position on the dispute. Eisen teaches that the opportunity to tell one's version of the dispute directly to the opposing party and to express accompanying emotions can be cathartic for mediation participants. Eisen also indicates that understanding the parties concerns, emotions and feelings are an important part in the mediation process since it enables the parties to engage in therapeutic conversation (page 5). Eisen goes on to state that it would be unwarranted to deliberately suppress expressions of anger or emotion in order to promote "constructive" responses since no one would know that the participant had

Art Unit: 3621

been angry and that anger is a common feature of disputes and participants have legitimate rights to express it to other participants (pages 6-7). Thus, examiner submits that it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Sloo and include a summary of the emotional state of the complainer in the complaint based on the teachings of Online Resolution and Eisen. Providing the emotional state of the complainer would enable the complaine to get a better understanding of the complainers state of feeling and would enable the complaine to more effectively respond to the complaint.

Furthermore, the claim merely states that a computer receives information from a complainer that includes information relating to an emotional state of the complainer. Examiner submits that this may be nothing more than the complainer stating in the complaint that he/she is angry or upset over the situation, which describes his/her emotional state. Sloo discloses that a complainer may register a detailed complaint using their own words (Col. 4 line 60-Col. 5 line 2). Although Sloo does not explicitly state that this information includes information relating to the emotional state of the complainer, examiner submits that the text describing the nature of the complaint written by the complainer certainly may include information that would suggest the emotional state of the complainer such as being angry, frustrated, annoyed, upset, hurt or offended in some way, or may include any other type of information for that matter. In Sloo, the complainer is free to include any information he/she feels is necessary when describing the complaint which, examiner submits, may include information that describes his/her emotional state or any other type of information. Examiner submits that if the courts were to adopt appellant's position, then anyone could continue indefinitely patenting a method for resolving disputes similar to Sloo provided that they add new or different information in the complaint (See *In re Ngai*, 70 USPQ2d 1862, 1864 (CA FC 2004)).

Appellant further argues that Eisen teaches away from the claimed invention since Eisen is skeptical about the efficacy of online mediation since it would be difficult to express emotion online and generally states that conducting online mediation would be difficult. Examiner submits that just because Eisen states that online mediation may be difficult for various reasons, does not necessarily mean that it is impossible or shouldn't be attempted. Also, examiner submits that the reference to Eisen was used

Art Unit: 3621

merely to show that individual emotions are an important consideration when resolving disputes and that this information should be included when resolving any dispute between two parties. Appellant admits this in the brief (See page 3, 2nd paragraph).

As stated above, Appellant argues that Eisen does not teach collecting emotional state information in a system lacking a mediator. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., in a system lacking a mediator) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Issue 5 (Claim 59)

Appellant states that Brownwell does not show or suggest the feature of "receiving, at a computer, information relating to an emotional state of the complainer". Examiner submits that claim 59 is related to preparing a complaint using first person language, and the reference to Brownwell was cited to show this. Examiner has not relied upon Brownwell for disclosing receiving information relating to an emotional state of the complainer. Examiner further submits that appellant's arguments amount to a general allegation that claim 59 defines a patentable invention without specifically pointing out how the language of the claim 59 patentably distinguishes it from the reference to Brownwell, and appears to amount to an allegation that claim 59 is patentable simply by the virtue of its dependence upon claim 55.

Issue 6 (Claim 60)

Appellant states that McFarland does not show or suggest the feature of "receiving, at a computer, information relating to an emotional state of the complainer". Examiner submits that claim 60 is related to docketing the approved complaint for predetermined actions at predetermined times, and the reference to McFarland was cited to show this. Examiner has not relied upon McFarland for disclosing receiving information relating to an emotional state of the complainer. Examiner further submits that appellant's arguments amount to a general allegation that claim 60 defines a patentable invention without

Art Unit: 3621

specifically pointing out how the language of the claim 60 patentably distinguishes it from the reference to McFarland, and appears to amount to an allegation that claim 60 is patentable simply by the virtue of its dependence upon claim 55.

Issue 1 (Claims 46-54)

Appellant argues that the reference to Sloo explicitly and plainly teaches withholding information identifying the complainer from the complaine, thus Sloo teaches away from the invention of claim 46. Appellant also repeats the argument discussed above by stating that since Online Resolution is directed to a system that supports a human mediator and Sloo does not have a human mediator, it would be improper to combine Sloo and Online Resolution. Appellant further argues that one of ordinary skill would not modify Sloo's system to that the complainer is named. In response, examiner submits that Sloo teaches an added benefit or embodiment that enables the parties of a dispute to remain anonymous so that members of the public and also the complainees cannot determine the identity of the complainer, however, examiner submits that this does not exclude other conventional methods for carrying out communication between the parties. Sloo teaches a method of identifying the complainer to the system. Sloo teaches that the user enters identifying information when registering a complaint (Col. 4, lines 48-51). Sloo also indicates that the user enters their phone number and e-mail address to identify the user (Col. 4 line 66-Col. 5 line 2). Furthermore, although Sloo teaches that the communications between the complainer and complaine are anonymous, examiner submits that it would have been obvious to one having ordinary skill in the art to provide complainer identifying information to the complaine in the event that the parties have no desire to remain anonymous. For example, the previously cited reference "Online Mediation Offered for Resolving E-Commerce Disputes" discloses that anyone interested in using online mediation can go to a web site, detail their grievance and submit it using e-mail. A center then contacts the other party and if the other party agrees to mediation, then all parties have the ability to communicate with each other by e-mail, instant messaging and even group discussions until they solve the problem. Examiner submits that using e-mail addresses is a form of user identification and it would have been obvious to use this type of identifier to communicate between parties of a dispute that don't desire to

Art Unit: 3621

remain anonymous. In this regard, the Declarations by Kallas and Femenia are not found by the examiner to be persuasive. Both Declarations by Kallas (paragraph 14) and Femenia (paragraph 15) recognize that Sloo enables complainers who want to be known to the target to reveal their identity in email direct negotiation. Examiner submits that, although Sloo discloses an added feature or benefit of allowing the complainers to remain anonymous, this does not preclude other conventional methods to carry out communication between the parties such as the use of email addresses as taught by Sloo, where the parties are identifiable if there is no desire to remain anonymous. As evidence to show that the parties to a dispute may be identified if desired, examiner provided the reference to Online Resolution. Examiner further submits that identifying parties to a dispute is not, by itself, novel or unobvious based on the teachings of Sloo and Online Resolution.

Furthermore, when considering the reference to Sloo, it is noted that Sloo discloses creating a unique e-mail address for the complainer and forwards this e-mail address to the complainee so that it can be used as a private message area to facilitate private negotiation of a settlement of a dispute without requiring the complainer to meet the complainee face-to-face (Col. 5, lines 10-20). Examiner submits that, although Sloo discloses that actual names are not disclosed to the complainee, the e-mail address is a form of identification. Also, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., naming the complainer) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). When considering claim 46, the claim recites "automatically forwarding, from the computer, the approved complaint, including the information identifying the complainer, to the complainee". Examiner submits that "information identifying the complainer" is not interpreted by the examiner to necessarily include the name of the complainer, but may include other types of identification. Examiner submits that it would be obvious that the e-mail address forwarded to the complainee in Sloo is a form of identification, even though it may not include the complainer's actual name.

Issue 2A (Claim 47)

Appellant states that Eisen does not justify redesigning Sloo to be non-anonymous. Examiner submits that claim 47 is related to including emotional state information relating to the complainer, and the reference to Eisen was cited to show this as discussed above. Examiner has not relied upon Eisen for disclosing a non-anonymous system. Examiner further submits that appellant's arguments amount to a general allegation that claim 47 defines a patentable invention without specifically pointing out how the language of the claim 47 patentably distinguishes it from the reference to Eisen, and amounts to an allegation that claim 47 is patentable simply by the virtue of its dependence upon claim 46.

Issue 3 (Claim 49)

Appellant states that Brownwell does not justify redesigning Sloo to be non-anonymous. Examiner submits that claim 49 is related to preparing a complaint using first person language, and the reference to Brownwell was cited to show this. Examiner has not relied upon Brownwell for disclosing a non-anonymous system. Examiner further submits that appellant's arguments amount to a general allegation that claim 49 defines a patentable invention without specifically pointing out how the language of the claim 49 patentably distinguishes it from the reference to Brownwell, and appears to amount to an allegation that claim 49 is patentable simply by the virtue of its dependence upon claim 46.

Issue 4 (Claim 51)

Appellant states that McFarland does not justify redesigning Sloo to be non-anonymous. Examiner submits that claim 51 is related to docketing the approved complaint for predetermined actions at predetermined times, and the reference to McFarland was cited to show this. Examiner has not relied upon McFarland for disclosing a non-anonymous system. Examiner further submits that appellant's arguments amount to a general allegation that claim 51 defines a patentable invention without specifically pointing out how the language of the claim 51 patentably distinguishes it from the reference to McFarland,

Art Unit: 3621

and appears to amount to an allegation that claim 51 is patentable simply by the virtue of its dependence upon claim 46.

Issue 7 (Claims 85-89)

Appellant asserts that Sloo does not disclose suggesting a remedy to a complainer during complaint preparation and to one of ordinary skill in the art of dispute resolution, changing Sloo so that the computer suggests a remedy to the complainer during complaint filing would change Sloo's fundamental dynamics and create a system substantively different than Sloo's system. Appellant further states that examiner has improperly used hindsight reconstruction in combining Sloo and Thiessen. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., suggesting a remedy to a complainer during complaint preparation) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In response to applicant's argument that the combination would create a system substantively different than Sloo's system, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Furthermore, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

When considering claim 85, Examiner respectfully disagrees with appellant's position and submits that the combination of Sloo and Theissen is proper since Sloo and Theissen are both related to dispute resolution and one of ordinary skill in the art of dispute resolution would draw inferences from

Art Unit: 3621

both references to consider what was known in the art. Applicant has previously admitted (see remarks of response filed 19 February 2004, page 11) that Sloo includes disclosure related to suggesting a remedy (See Sloo, Col. 4, lines 61-67; Col. 7 line 65-Col. 8 line 5), but then argues that this remedy is not proposed during complaint filing. Examiner submits that claim 85 does not stipulate proposing the remedy "during complaint filing". Furthermore, examiner submits that Theissen discloses that the users involved in resolving a dispute are encouraged to input information pertaining to their individual preferences on each issue to be negotiated and make a proposal or identify at least one alternative solution to the problem that they would find acceptable (Col. 3, lines 18-31). Theissen further discloses that the system then uses the preference information to provide equivalent alternatives to party proposals to insure no loss of satisfaction while minimizing the maximum gain achieved by any party (Col. 3, line 30-40 and Col. 5, lines 55-60). Thus, Theissen discloses providing remedies or proposed solutions to the problem at the outset of the problem identification. Examiner submits that including this benefit in the teachings of Sloo would not fundamentally change the system of Sloo as suggested in the Declarations, but would rather provide the added feature of suggesting a remedy to the user from which he/she could select in trying to resolve the dispute with mutual satisfaction, especially in view of the teaching by Sloo that the system is capable of arriving at proposed solutions to the dispute (Col. 4, lines 61-67; Col. 7 line 65-Col. 8 line 5; Col. 11, lines 21-35).

Issue 8 (Claim 86)

Appellant states that Eisen does not justify fundamentally altering Sloo so that Sloo's system suggests a remedy to the complainer during complaint preparation. Examiner submits that claim 86 is related to including emotional state information relating to the complainer, and the reference to Eisen was cited to show this as discussed above. Examiner has not relied upon Eisen for disclosing suggesting a remedy to the complainer during complaint preparation. Examiner further submits that appellant's arguments amount to a general allegation that claim 86 defines a patentable invention without specifically pointing out how the language of the claim 86 patentably distinguishes it from the reference to Eisen, and amounts to an allegation that claim 86 is patentable simply by the virtue of its dependence upon claim 85.

Art Unit: 3621

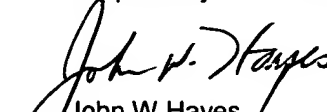
Issue 9 (Claim 87)

Appellant states that McFarland does not justify fundamentally altering Sloo so that Sloo's system suggests a remedy to the complainer during complaint preparation. Examiner submits that claim 87 is related to docketing the approved complaint for predetermined actions at predetermined times, and the reference to McFarland was cited to show this as discussed above. Examiner has not relied upon McFarland for disclosing suggesting a remedy to the complainer during complaint preparation. Examiner further submits that appellant's arguments amount to a general allegation that claim 87 defines a patentable invention without specifically pointing out how the language of the claim 87 patentably distinguishes it from the reference to McFarland, and amounts to an allegation that claim 87 is patentable simply by the virtue of its dependence upon claim 85.

Art Unit: 3621


For the above reasons, it is believed that the rejections should be sustained.

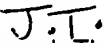
Respectfully submitted,


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